

405 KAR 7:050. Coal processing waste disposal sites.

RELATES TO: KRS 151.125, 151.297, 224.071, 350.020, 350.090(1), 350.420

STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020 states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs the cabinet to adopt whatever administrative regulations are found necessary to accomplish the purpose of KRS Chapter 350. Furthermore, KRS 151.125 and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservoir, levee, embankment, or other water barrier. In addition, KRS 224.071 provides for the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This administrative regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because such facilities are not otherwise adequately regulated. This administrative regulation provides, among other things, for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This administrative regulation applies to all coal processing waste disposal sites, whether dams, waste impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1) Within sixty (60) days of September 21, 1982, operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the cabinet regional office:

(a) All existing information currently available to the operator or owner including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site including moisture content and particle size gradation. This shall also include copies of plans submitted to and/or approved by MSHA. If such plans submitted to MSHA include all of the information required by this paragraph, then submittal of copies of such plans shall suffice. Where information required by this paragraph has already been submitted to the cabinet as a part of a permit application, the operator or owner shall so notify the cabinet regional office in writing and need not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility as applicable, including a map showing the location of the facility.

(2) Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner. However, on a case-by-case basis, at any time, the cabinet may require the operator or owner to submit such additional plans and analyses or to conduct such investigations and testing of materials as necessary to determine the stability of the facility where failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth. This may include, but is not limited to, seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding wa-

ter, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with either 405 KAR 1:210 or 405 KAR 3:180.

(2) All other coal processing waste disposal sites shall comply with 30 CFR 77.214 as amended at 36 Fed. Reg. 13,143 (1971) and 30 CFR 77.215 as amended at 40 Fed. Reg. 41,776 (1975), provided, however, no facility shall be constructed in such manner that it may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facility.

(3) Those portions of structures that have already been constructed and structures that have been completed need not be reconstructed except where reconstruction is determined by the cabinet to be necessary to ensure stability of the facility in order to eliminate potential hazards to life or property or to prevent injurious effects on the environment of the Commonwealth.

(4) Nothing in this administrative regulation shall be construed as relieving an operator from the obligation to comply with any other provision of 405 KAR, including, but not limited to, compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. Operators or owners of coal processing waste disposal sites may be required by the cabinet to revise the facility design and/or to implement such remedial measures as necessary to comply with Section 3 of this administrative regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this administrative regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified registered professional engineer or by qualified persons under the engineer's supervision and the facility shall be certified within two (2) weeks of each inspection by the responsible qualified registered professional engineer as having been constructed in accordance with the design approved by the cabinet. Where the cabinet has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA. (9 Ky.R. 634; Am. 1148; eff. 5-4-83.)